

**DEPARTMENT OF STATE REVENUE**

**LETTER OF FINDINGS NUMBER: 96-0316 CS  
Controlled Substance Excise Tax  
For The Tax Periods: 1994**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUES**

**I. Controlled Substance Excise Tax - Possession**

**Authority:** IC 6-7-3-5, Cliff v. Indiana Department of State Revenue, 660 N.E.2d 310 (1995).

The taxpayer protests assessment of controlled substance excise tax.

**II. Tax Administration - Interest**

**Authority:** IC 6-8.1-10-1.

The Taxpayer protests assessed interest.

**III. Tax Administration - Penalty**

**Authority:** IC 6-7-3-11.

The Taxpayer protests assessed penalty.

**STATEMENT OF FACTS**

The Department issued a jeopardy assessment against the taxpayer based on the taxpayer's possession of marijuana.

More facts will be provided as necessary.

## **I. Controlled Substance Excise Tax - Possession**

### **DISCUSSION**

Indiana Code 6-7-3-5 states:

The controlled substance excise tax is imposed on controlled substances that are:

- (1) delivered,
- (2) possessed; or
- (3) manufactured;

in Indiana in violation of IC 35-48-4 or 21 U.S.C. 841 through 21 U.S.C. 852.

On January 26, 1994 the Department assessed Controlled Substance Excise Tax on the taxpayer for possession of 765 grams of marijuana. Taxpayer argues that the assessment constituted jeopardy. Taxpayer contends that the assessment violates the double jeopardy clause in the Constitution. Taxpayer cites the Indiana Supreme Court's holdings in 1995 on double jeopardy and the Controlled Substance Excise Tax. The Indiana Supreme Court did address this issue in Cliff v. Indiana Department of State Revenue, 660 N.E.2d 310, 313 (1995). The Court held that since the Department's assessment was first in time, it does not constitute the double jeopardy. In this case, the Department's assessment came before the taxpayer's plea agreement. The Department's assessment occurred on 1/26/94 and the disposition of the taxpayer's criminal case was 10/7/94.

### **FINDING**

The taxpayer's protest is denied.

## **II. Tax Administration - Interest**

### **DISCUSSION**

The taxpayer protests the imposition of interest on its assessment. Indiana Code 6-8.1-10-1 states in pertinent part:

(a) If a person. . . incurs a deficiency upon a determination by the department, the person is subject to interest on the nonpayment,

(e) Except as provided by IC 6-8.1-5-2(e)(2), the department may not waive the interest imposed under this section.

Therefore, the Department may not legally waive the interest.

**FINDING**

The taxpayer's protest of interest is denied.

**III. Tax Administration - Penalty**

**DISCUSSION**

The taxpayer protests the assessed 100% penalty. Indiana Code 6-7-3-11 states in pertinent part, "A person who fails or refuses to pay the tax imposed by this chapter is subject to a penalty of one hundred percent (100%) of the tax in addition to the tax."

**FINDING**

The taxpayer's protest to penalty is denied.